

country under the EAR. These provisions were issued consistent with Executive Order 13338 of May 11, 2004 which implemented the SAA.

(b) *Sanctions on selected categories of items to specific destinations.* (1) BIS controls the export and reexport of selected categories of items to countries under United Nations Security Council arms embargoes. See the Commerce Control List in Supplement No. 1 to Part 774. See also §§ 746.3 (Iraq) and 746.4 (North Korea).

(2) The countries subject to United Nations Security Council arms embargoes are: Cote d'Ivoire (Ivory Coast), Democratic Republic of the Congo, Eritrea, Iran, Iraq, Lebanon, Liberia, Libya, North Korea, Somalia, and Sudan.

(3) A license is required to export or reexport items identified in Part 774 as having a "UN" reason for control to countries identified in paragraph (b)(2) of this section. To the extent consistent with United States national security and foreign policy interests, BIS will not approve applications for such licenses if the authorization would be contrary to the relevant United Nations Security Council Resolution.

(4) You may not use any License Exception to export items subject to UN arms embargo controls to countries listed in 746.1(b)(2), except License Exception GOV § 740.11(b)(2)(i) and (ii).

(c) This part also contains descriptions of controls maintained by the Office of Foreign Assets Control in the Treasury Department and by the Directorate of Defense Trade Controls in the Department of State. Comprehensive embargoes and supplemental controls implemented by BIS under the EAR usually also involve controls on items and activities maintained by these agencies. This part sets forth the allocation of licensing responsibilities between BIS and these other agencies. References to the requirements of other agencies are informational; for current, complete, and authoritative

requirements, you should consult the appropriate agency's regulations.

[61 FR 12806, Mar. 25, 1996, as amended at 62 FR 25459, May 9, 1996; 65 FR 38160, June 19, 2000; 67 FR 70546, Nov. 25, 2002; 69 FR 3005, Jan. 22, 2004; 69 FR 23638, Apr. 29, 2004; 69 FR 46076, July 30, 2004; 72 FR 3725, Jan. 26, 2007; 73 FR 36, Jan. 2, 2008; 76 FR 77117, Dec. 12, 2011; 77 FR 42975, July 23, 2012]

§ 746.2 Cuba.

(a) *License requirements.* As authorized by section 6 of the Export Administration Act of 1979, as amended (EAA) and by the Trading with the Enemy Act of 1917, as amended, you will need a license to export or reexport all items subject to the EAR (see part 734 of the EAR for the scope of items subject to the EAR) to Cuba, except as follows.

(1) *License Exceptions.* You may export or reexport without a license if your transaction meets all the applicable terms and conditions of any of the following License Exceptions. To determine the scope and eligibility requirements, you will need to turn to the sections or specific paragraphs of part 740 of the EAR (License Exceptions). Read each License Exception carefully, as the provisions available for embargoed countries are generally narrow.

(i) Temporary exports and reexports (TMP) by the news media (see § 740.9(a)(2)(viii) of the EAR).

(ii) Operation technology and software (TSU) for legally exported commodities or software (see § 740.13(a) of the EAR).

(iii) Sales technology (TSU) (see § 740.13(b) of the EAR).

(iv) Software updates (TSU) for legally exported software (see § 740.13(c) of the EAR).

(v) Parts (RPL) for one-for-one replacement in certain legally exported commodities (see § 740.10(a) of the EAR).

(vi) Baggage (BAG) (see § 740.14 of the EAR).

(vii) Governments and international organizations (GOV) (see § 740.11 of the EAR).

(viii) Gift parcels and humanitarian donations (GFT) (see § 740.12 of the EAR).

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(ix) Items in transit (TMP) from Canada through the U.S. (see §740.9(b)(1)(iv) of the EAR).

(x) Aircraft and vessels (AVS) for certain aircraft on temporary sojourn (see §740.15(a) of the EAR).

(xi) Permissive reexports of certain spare parts in foreign-made equipment (see §740.16(h) of the EAR).

(xii) Exports of agricultural commodities, classified as EAR99, under License Exception Agricultural Commodities (AGR) and certain reexports of U.S. origin agricultural commodities, classified as EAR99, under License Exception AGR (see §740.18 of the EAR).

(xiii) Commodities and software authorized under License Exception Consumer Communications Devices (CCD) (see §740.19 of the EAR).

(2) [Reserved]

(b) *Licensing policy.* Items requiring a license are subject to a general policy of denial, except as follows:

(1) *Medicines and Medical Devices.* Applications to export medicines and medical devices as defined in part 772 of the EAR will generally be approved, except:

(i) To the extent restrictions would be permitted under section 5(m) of the Export Administration Act of 1979, as amended (EAA), or section 203(b)(2) of the International Emergency Economic Powers Act;

(ii) If there is a reasonable likelihood that the item to be exported will be used for purposes of torture or other human rights abuses;

(iii) If there is a reasonable likelihood that the item to be exported will be reexported;

(iv) If the item to be exported could be used in the production of any biotechnological product; or

(v) If it is determined that the United States government is unable to verify, by on-site inspection or other means, that the item to be exported will be used for the purpose for which it was intended and only for the use and benefit of the Cuban people, but this exception shall not apply to donations of medicines for humanitarian purposes to a nongovernmental organization in Cuba.

(2) Items may be authorized for export or reexport to Cuba on a case-by-case basis, provided the items are nec-

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essary to provide efficient and adequate telecommunications links between the United States and Cuba, including links established through third countries, and including the provision of satellite radio or satellite television services to Cuba.

(3) Exports from third countries to Cuba of non-strategic foreign-made products that contain an insubstantial proportion of U.S.-origin materials, parts, or components will generally be considered favorably on a case-by-case basis, provided all of the following conditions are satisfied:

(i) The local law requires, or policy favors, trade with Cuba;

(ii) The U.S.-origin content does not exceed 20 percent of the value of the product to be exported from the third country. Requests where the U.S.-origin parts, components, or materials represent more than 20 percent by value of the foreign-made product will generally be denied. See Supplement No. 2 to part 734 of the EAR for instructions on how to calculate value; and

(iii) You are not a U.S.-owned or -controlled entity in a third country as defined by OFAC regulations, 31 CFR part 515, or you are a U.S.-owned or controlled entity in a third country and one or more of the following situations applies:

(A) You have a contract for the proposed export that was entered into prior to October 23, 1992.

(B) Your transaction involves the export of foreign-produced medicines or medical devices incorporating U.S. origin parts, components or materials, in which case the application will be reviewed according to the provisions of paragraph (b)(1) of this section.

(C) Your transaction is for the export of foreign-produced telecommunications commodities incorporating U.S.-origin parts, components and materials, in which case the application will be reviewed under the licensing policy set forth in paragraph (b)(2) of this section.

(D) Your transaction is for the export of donated food to individuals or nongovernmental organizations in Cuba and does not qualify as a humanitarian donation under License Exception GFT (§740.12 of the EAR) or License Exception AGR (§740.18 of the EAR).

(4) Applications for licenses may be approved, on a case-by-case basis, for certain exports to Cuba intended to provide support for the Cuban people, as follows:

(i) Applications for licenses for exports of certain commodities and software may be approved to human rights organizations, or to individuals and non-governmental organizations that promote independent activity intended to strengthen civil society in Cuba when such exports do not give rise to U.S. national security or counter-terrorism concerns. Examples of such commodities include fax machines, copiers, computers, business/office, software document scanning equipment, printers, typewriters, and other office or office communications equipment. Applicants may donate or sell the commodities or software to be exported. Reexport to other end-users or end-uses is not authorized.

(ii) Commodities and software may be approved for export to U.S. news bureaus in Cuba whose primary purpose is the gathering and dissemination of news to the general public. In addition to the examples of commodities and software listed in paragraph (b)(4)(i) of this section, certain telecommunications equipment necessary for the operation of news organizations (e.g., 33M bit/s data signaling rate or less) may be approved for export to U.S. news bureaus.

(iii) Exports of agricultural items, which are outside the scope of agricultural commodities as defined in part 772 of the EAR, such as insecticides, pesticides and herbicides, as well as agricultural commodities not eligible for License Exception AGR, require a license and will be reviewed on a case-by-case basis.

(5) Applications for exports of aircraft or vessels on temporary sojourn to Cuba either to deliver humanitarian goods or services, or consistent with the foreign policy interests of the United States, will be considered on a case-by-case basis.

(c) Cuba has been designated by the Secretary of State as a country whose government has repeatedly provided support for acts of international terrorism. For anti-terrorism controls,

see Supplement 2 to part 742 of the EAR.

(d) *Definitions.* For purposes of this section, “U.S. person” means any person subject to the jurisdiction of the United States, as described in § 515.329 of the Cuban Assets Control Regulations (31 CFR 515.329).

(e) *Related controls.* OFAC maintains controls on the activities of persons subject to U.S. jurisdiction, wherever located, involving transactions with Cuba or any specially designated Cuban national, as provided in 31 CFR part 515. OFAC’s Terrorism List Government Sanctions Regulations in 31 CFR part 596 prohibit U.S. persons from engaging in a financial transaction with the government of a designated state sponsor of international terrorism without OFAC authorization. The Department of State also implements sanctions on countries that are designated state sponsors of international terrorism. Exporters and reexporters should consult with those agencies for further guidance on these related controls.

[61 FR 12802, Mar. 25, 1996, as amended at 61 FR 64284, Dec. 4, 1996; 62 FR 9364, Mar. 3, 1997; 62 FR 25459, May 9, 1997; 64 FR 25808, May 13, 1999; 66 FR 36682, July 12, 2001; 69 FR 5690, Feb. 6, 2004; 69 FR 34567, June 22, 2004; 74 FR 45990, Sept. 8, 2009]

§ 746.3 Iraq.

Pursuant to United Nations Security Council (UNSC) Resolutions 1483 and 1546 and other relevant resolutions, the United Nations maintains an embargo on the sale or supply to Iraq of arms and related materiel and their means of production, except items required by the Interim Government of Iraq or the Multinational Force in Iraq to serve the purposes of Resolution 1546. UNSC Resolutions 707 and 687 require that Iraq eliminate its nuclear weapons program and restrict its nuclear activities to the use of isotopes for medical, industrial or agricultural purposes. Such resolutions further mandate that Iraq eliminate its chemical and biological weapons programs as well as its ballistic missile program. In support of the applicable UNSC resolutions, certain Iraq specific license requirements and licensing policies are detailed in this section. In addition, this section